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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
)  
Policies and Rules Governing )  
Interstate Pay-Per-Call )  
and Other Information Services )  
Pursuant to the Telecommunications )  
Act of 1996 )

CC Docket No. 96-146

**GTE's REPLY COMMENTS**

GTE Service Corporation and its affiliated  
domestic telephone operating companies

Richard McKenna, HQE03J36  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092  
(214) 718-6362

Gail L. Polivy  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 463-5214

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Their Attorneys

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## SUMMARY

1. The exchange carrier industry continues to support actively the efforts of Congress and the Commission to protect consumers.
2. The FCC should reject arguments of Excel that would immunize IXC-resellers from the consequences of their own actions and grant them an unlawful subsidy.
3. The *Notice* correctly limits the proposed evidentiary assumption to calls to *interstate* information service.
4. MTC's 800 service arrangement allows its customers to access 800 numbers that would otherwise not be available to them because 800 subscribers have not chosen to include in their service the band that embraces the Northern Mariana Islands.

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**GTE's REPLY COMMENTS**

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), with reference to the Order and Notice of Proposed Rulemaking in the captioned proceeding, FCC 96-289 (released July 11, 1996) (the "*Notice*"), and in response to the comments of various parties, offers the following reply comments.

**1. The exchange carrier industry continues to support actively the efforts of Congress and the Commission to protect consumers.**

The United States Telephone Association ("USTA"), GTE, Southwestern Bell Telephone Co., and Pacific Bell/Nevada Bell continue to recommend to the Commission vigorous enforcement of the law and to suggest ways this could be more effectively achieved.

In particular, USTA suggests (at 3) a discrete data field or account indicator could be used to identify items where the call was made via toll-free numbers. This is similar to GTE's suggestion (at 5) for the FCC -- in conjunction with an industry forum -- to require a message or account indicator certifying the called number and that there is a written presubscription agreement. Requirements of this sort should be imposed on

the interexchange carrier ("IXC"), which in the case of interstate Pay-Per-Call ("PPC") services is the regulated entity having the immediate contact with, and the agreement with, the Information Provider ("IP") or clearing houses for IPs. Armed with the requisite message or account indicator placed in fields designated by an industry forum, the Local Exchange Carrier ("LEC" or "exchange carrier") will have the ability to distinguish items of concern amidst the vast flow of billing items, and this would then give the LECs the ability to take action.

Further, as previously recommended by GTE (at 4), the Commission should accompany this by a decision that deceptive use of these indicators would constitute good faith grounds for contract termination. Action of this kind would make it unnecessary to contemplate such burdensome alternatives as the LEC billing block option proposed by the Florida commission.

**2. GTE urges the FCC to reject arguments of Excel that would immunize IXC-resellers from the consequences of their own actions and grant them an unlawful subsidy, all in violation of Congressional intent.**

Excel Telecommunications, Inc. ("Excel") seeks Commission action insulating IXC-resellers like Excel from the consequences of their own actions. Excel says, where the end user customer refuses to pay a billing for PPC services (which is very often alleged to have occurred because of fraudulent or overbearing behavior on the part of either the IP or the IXC), the FCC should insulate the IXC-reseller from having to pay its bills to the underlying carrier(s). This would compound all problems in that it would place IXC-resellers -- some of which are along with IPs the most notorious offenders -- in an even better position to take advantage of consumers, while passing off the negative effects to another party.

Further, inasmuch as this would represent a subsidy, this action would appear to violate at least the spirit of 47 U.S.C. Section 254(k) -- part of the Telecommunications Act of 1996 -- which prohibits subsidies by one service to another. Here, if Excel's proposal were accepted, exchange carriers and facilities-based IXCs would be required to subsidize a primary source of the very problems that have demanded so much attention by Congress and the Commission -- thus producing a result precisely opposite congressional intent.

3. **The *Notice* in paragraph 48 correctly limits the proposed evidentiary assumption to calls to interstate information service, i.e., limits it to the jurisdictional scope of the FCC and Congress.**

Paragraph 48 of the *Notice* provides:

Pursuant to Section 4(i) of the Communications Act, we tentatively conclude that when a common carrier charges a telephone subscriber for a call to an interstate information service, any form of remuneration from that carrier to an entity providing or advertising the service, or any reciprocal arrangement between such entities, constitutes *per se* evidence that the charge levied actually exceeds the charge for transmission. Accordingly, interstate services provided through such arrangements would fit within the pay-per-call definition and, thus, be required to be offered exclusively through 900 numbers. We invite comment on this tentative conclusion and, also, as to whether, in any event, such conduct by a common carrier is just and reasonable.

This language, which is carefully written to refer only to "a call to an interstate information service," does not attempt to deal with transactions taking place in foreign countries<sup>1</sup> between a carrier within that country (in many countries this is a governmental entity) and either individual(s) or firms outside the jurisdiction of the

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<sup>1</sup> Doubts about the jurisdictional reach of the FCC into other countries is expressed even by the Alliance of Young Families at 5-6 and 7. Note also the reservations expressed by Congressman Bart Gordon at 2.

United States -- for example, individuals who are not United States citizens and are not resident within the United States, or corporations formed under the law of a foreign country and not present for jurisdictional purposes in the United States. This approach avoids getting the Commission involved in transactions as to which FCC jurisdiction would be doubtful or nonexistent, and perhaps outside the scope of the FCC's statutory charter. Here, in paragraph 48, the FCC has wisely addressed itself only to matters within its jurisdiction. To effect changes in the practices of foreign nations in this regard, a diplomatic effort will be required, one that would establish common principles and a cooperative spirit.

**4. MTC's 800 service arrangement allows its customers to access 800 numbers that would otherwise not be available to them because 800 subscribers have not chosen to include in their service the Northern Mariana Islands.**

Stepping well outside the scope of this proceeding, the Commonwealth of the Northern Mariana Islands (the "Commonwealth") states (at 4) that Micronesian Telecommunications Corporation ("MTC"),<sup>2</sup> one of the GTE domestic telephone operating companies, "routinely bills end users for 800 calls." This is absolutely untrue. MTC does not bill users for 800 calls.

Availability of 800 service in the Northern Mariana Islands is dependent on decisions made by the various business enterprises that make use of 800 service. Today, U.S. 800 subscribers do not typically choose to purchase from IXC's 800 service

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<sup>2</sup> MTC is the local exchange service provider in the Northern Mariana Islands and one of the interexchange carriers providing service from the Northern Mariana Islands to the U.S. mainland.

that embraces the Northern Mariana Islands.<sup>3</sup> So that its customers will not be completely denied access to the great range of services available through 800 numbers, MTC accommodates them by providing access to 800 service -- not via the "contiguous U.S." as the Commonwealth believes (at 3) but via Hawaii.

In other words, MTC routes domestic calls (dialed as 011+1880+ 7 digits) that are otherwise not available to residents of the Northern Mariana Islands to the 800 numbers available in Hawaii and charges the calling customer for the Northern Mariana Islands/Hawaii link.<sup>4</sup> MTC's understanding is that its customers very much appreciate availability of this service. There is no statute, rule or FCC policy that prevents MTC from (i) offering a valuable service that permits its customers to reach otherwise unavailable 800 numbers and (ii) charging for the link it provides.<sup>5</sup>

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<sup>3</sup> If a U.S. subscriber does include the Northern Mariana Islands within its calling scope, that call is available to end users in the Northern Mariana Islands from MTC as a completely toll-free call.

<sup>4</sup> It is GTE's understanding that other carriers provide similar service from Guam and the Northern Mariana Islands with similar arrangements so that the end user in Guam and the Northern Mariana Islands pays only for the link to the U.S. Mainland.

<sup>5</sup> The Commonwealth's rate information (at 5 n.13) is out of date. As of August 9, 1996, the MTC rate is ninety-nine cents per minute seven days a week twenty-four hours a day.

The Commonwealth is mistaken if it believes that incorporation into the North American Numbering Plan ("NANP")<sup>6</sup> and rate integration into the domestic rate schedule of interstate interexchange carriers will eliminate the 800 problem that exists in the Northern Mariana Islands.

Admission into the NANP may not make any more 800 numbers available to the citizens of the Northern Mariana Islands than are available today, nor will it necessarily affect the rates charged for 800 service to/from the Northern Mariana Islands. After the NANP changes, 800 service subscribers would still have to choose to include the Commonwealth band in their serving areas for these 800 numbers to be available to end users in the Northern Mariana Islands. What admission into the NANP will mean is that MTC's current dialing scheme will have to change.

Presently, 1+800 provides access to international toll free numbers, including U.S. 800 numbers which include the Northern Mariana Islands. In order to facilitate an end user's access to 800 numbers which do not include the Northern Mariana Islands, MTC has provided the arrangement that allows paid access (as described *supra*) to domestic 800 numbers that are not available to residents of the Northern Mariana Islands by dialing 011+1880. Consequently, MTC will no longer be able to use 011+1880 for paid access to U.S. points unless special arrangements are made.

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<sup>6</sup> "[T]he Commonwealth will receive an area code (i.e., 671) and, like any other U.S. NANP point, should be served by true 800 calling." *Id.* at n.9. Until August 1, 1997, all calls from the Northern Mariana Islands to the mainland, Hawaii, and other domestic points will continue to be dialed as *international* calls. See Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order, CC Docket No. 96-61, FCC 96-331 (released August 7, 1996) at ¶73.

Rate integration would affect the availability of domestic 800 numbers only to the extent that: (1) the domestic 800 rate schedules established by IXC's incorporating the Northern Mariana Islands have rates low enough to encourage 800 service subscribers to include the Northern Mariana Islands in their serving area; and (2) the cost/benefit analysis normally performed by companies subscribing to 800 service demonstrates that subscription to a rate band that includes the Northern Mariana Islands would be cost-effective. These are the real issues behind the availability of domestic 800 numbers to the residents of the Northern Mariana Islands.

MTC's provision to its customers of access to 800 numbers -- numbers that would otherwise not be available -- is in the public interest. If the Commission were to grant the Commonwealth's request and stop MTC from providing paid access to 800 numbers that *are not otherwise available* to the residents of the Northern Mariana Islands, it would have no positive effect on availability of 800 service in the Commonwealth -- inasmuch as this is determined by the business decisions of 800 subscribers -- and it would deny end users in the Commonwealth a service they very much want. Clearly, this would not serve the public interest.

This outcome will not change with implementation of Section 254(g) of the 1996 Act. The core decision is made by 800 subscribers -- firms that either choose to pay more to include the Northern Mariana Islands in their 800 calling scope or that decide it is not worth the added cost. While rate integration would have a bearing on overall economics, the underlying problem will be the same.


Indeed, MTC suggests the Commission's pro-competitive policy should encourage innovative solutions such as MTC's paid access to otherwise unavailable

800 numbers. Even after the Northern Mariana Islands are rate integrated into the IXCs' rate schedules, MTC should be allowed to provide paid access, so the residents of the Northern Mariana Islands will have access to otherwise unavailable 800 numbers.

Respectfully submitted,

GTE Service Corporation and its affiliated  
domestic telephone operating companies

Richard McKenna, HQE03J36  
GTE Service Corporation  
P.O. Box 152092  
Irving, TX 75015-2092  
(214) 718-6362

By   
Gail L. Polivy  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036  
(202) 463-5214

September 16, 1996

Their Attorneys

### **Certificate of Service**

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Reply Comments" have been mailed by first class United States mail, postage prepaid, on September 16, 1996 to all parties of record.



Ann D. Berkowitz